

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF HUMAN SERVICES

In the Matter of the Denial of the License
Application of Daniel Reber to Provide
Child Foster Care

**FINDINGS OF FACT,
CONCLUSIONS,
AND RECOMMENDATION**

The above matter came on for hearing before Administrative Law Judge Richard C. Luis (ALJ) at 9:30 a.m. on December 4, 2007, at the Office of Administrative Hearings in Saint Paul, Minnesota. The hearing was recessed until December 7, 2007, when the hearing was concluded. The hearing record closed at the conclusion of the hearing.

Michael Q. Lynch, Assistant Hennepin County Attorney, 525 Portland Avenue, Suite 1210, Minneapolis, MN 55415 appeared on behalf of Hennepin County Human Services and Public Health Department (the County or "Local Agency") and the Minnesota Department of Human Services ("Department"). The Applicant, Daniel Reber, 5312 Nokomis Parkway West, Minneapolis, MN 55417, appeared on his own behalf.

STATEMENT OF ISSUE

Whether the Commissioner's Order denying the license application of Daniel Reber to provide child foster care should be affirmed because he fails to meet the requirements of Minn. Rules 2960.3060, subp. 4, and 2960.3080, subp. 5.

Based on the proceedings in this matter, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. The Applicant, Daniel Reber, was licensed as a foster care provider in the mid-1990's. He provided foster care in conjunction with his partner, until she left the household in approximately 1999. The Applicant continued to provide foster care, without assistance, from that time onward.^[1]

2. On April 4, 2001, the Applicant participated in a special education intake meeting for a foster child, N.S., who was in the Applicant's care. The school social worker asked that the Hennepin County social worker assigned to N.S. execute the new Individual Education Plan (IEP) for N.S. The Applicant objected to the social worker executing that agreement and maintained that he should have signed as the "surrogate parent" for N.S. The Applicant filed a formal complaint with the Department of Children, Families, and Learning (now Department of Education) regarding the matter.^[2]

3. In 2001, the Applicant was the subject of a Hennepin County Child Protection investigation regarding two children in his foster care. The Applicant allowed a developmentally-limited eleven-year-old child (N.S.) to supervise a five-year-old child when both children walked one and one-half blocks to a neighborhood park without adult supervision. N.S. functions at the seven-year-old age level, while the younger child functions at about the three-year-old age level. Child Protection concluded that the Applicant had committed maltreatment by failing to properly supervise the two children in the Applicant's care.^[3] The Applicant requested reconsideration of the finding, and the finding was upheld on reconsideration.^[4]

4. On May 25, 2001, the Professional Association of Treatment Homes (PATH) removed the two children from the Applicant's foster care, due to concerns about the safety of those children.^[5]

5. On June 4, 2001, PATH recommended to the Minnesota Department of Human Services (Department) that the Applicant's foster care license be revoked. PATH cited as reasons for revocation several incidents of the Applicant's interjecting in areas of the foster care and adoption process that are the responsibility of others, argumentative and offensive behavior, improper physical treatment of a daycare child resulting in injuries, and the above-described failure to supervise the two foster children. In its recommendation letter, PATH stated:

PATH's short history with Dan Reber has been very problematic. Mr. Reber does not take direction, is argumentative and aggressive in his dealing with the agency and other professionals. He has used very poor judgment in a number of instances, several of them resulting in inadequate parenting and potential endangerment of foster youth. It is the recommendation of the agency that Daniel Reber's foster care license be revoked.^[6]

6. The Applicant sought judicial authorization for having a foster child who had been removed from his care (D.J.) returned to his care pending possible adoption. On January 11, 2002, District Judge Heidi Schellhas ordered that D.J. remain in the Applicant's care and that the County pay for in-home services.^[7]

7. On March 18, 2002, the Department issued an Order of Revocation which found that the Applicant had engaged in inappropriate discipline, bypassed the care plan development process, smoked in the foster care premises, committed maltreatment in failing to properly supervise foster care children, engaged in argumentative behavior with social workers, and accepted a child for foster care outside of the placement process. The Department found that the number and seriousness of the violations required that the Applicant's foster care license be revoked.^[8]

8. The County did not seek to change the placement of D.J. following the revocation of the Applicant's foster care license. On May 22, 2002, Judge Schellhas transferred legal custody of D.J. to the Applicant and required the County to pay child support in roughly the amount of the foster care payments that had been made prior to May, 2001.^[9] The resulting situation was similar to D.J.'s remaining in foster care, even though the Applicant was no longer licensed to provide such care. The County continued to seek permanent adoptive placement for D.J.

9. On April 27, 2006, Hennepin County Human Services and Public Health Department (the County) received Reber's Application for Child Placement, which would allow placement of new foster children in Applicant's home. Kelly Sarenpa, Senior Social Worker for Foster Care Recruitment and Intake for the County, initiated the investigation required before the County made its recommendation to the Department of Human Services on the Application.^[10]

10. On May 3, 2006, Betty Woodland, Senior Social Worker, was interviewed regarding the Applicant. Woodland noted that the Applicant was providing care for a foster child, DJ, for whom she was the child's adoption recruiter from March, 2003 to February, 2005. Woodland related that the Applicant set very few rules for DJ, allowed him to stay up late at night to play video games, and created a situation that was hard to work with for all the other participants in DJ's placement. Woodland related that DJ's guardian ad litem ended up scheduling therapy and dental appointments and transporting him, just to ensure that DJ kept those appointments. In Woodland's opinion, the Applicant had "sabotaged" a potential adoptive placement for DJ.^[11]

11. Woodland described the Applicant's responses to the circumstances surrounding the efforts to obtain an adoptive placement for D.J. while he was in the Applicant's legal custody as "angry." The Applicant made claims that Woodland was lying and that she should seek to confess and obtain absolution. Woodland found this conduct to be both inappropriate and personally offensive.^[12]

12. On May 3, 2006, Mary Carey, Child Protection Social Worker, noted that the Applicant's foster care license had been revoked and recalled that she had testified in that prior proceeding.^[13] On that date another social worker, Gina Hyun, responded to Sarenpa that the Applicant had "mental health issues"

and that she thought he was barred from applying for twenty years. Hyun characterized the Application as “bad news.”^[14]

13. On May 4, 2006, Jimmie Peterson, Senior Social Worker, related that the Applicant showed a minimal amount of communication with his foster child (D.J.) and that Peterson had encouraged the Applicant to both communicate and set limits with the foster child. Peterson found the absence of any “real relationship” between the Applicant and D.J., despite the years that D.J. had been living in the Applicant’s home, to be “most troubling.” Peterson maintained that he was not in “a position to be for or opposed to him being a FP [foster parent].”^[15]

14. On May 19, 2006, Susan Lundquist, Senior Social Worker, described her experiences working with the Applicant from 1998 to 2001. She described instances where the Applicant was not actively supervising the foster children in his care. Lundquist declined to recommend the Applicant for relicensure in Hennepin County. Lundquist cited as reasons for her opinion the Applicant’s emotional functioning after the death of his mother in 1999, argumentative responses to direction by social workers, and boundary issues perceived as “pervasive.” Lundquist provided as examples of the boundary problems the following:

The Applicant’s sending Christmas cards to the Social Worker and her husband.

The Applicant’s scheduling one of the foster child’s birthday parties at the Social Worker’s husband’s place of employment.

The Applicant’s conduct in an event with a professional football player, where the Applicant urged the player to adopt a foster child in the Applicant’s care.

The Applicant’s referring to DJ and KM (foster children) as “our sons.”

The Applicant’s designating as his “main man” a foster child with a history of aggressive behavior, and having that child assist the Applicant in parenting the other foster children in the home.

The Applicant’s allowing some of the foster children to share rooms and/or to visit each other’s rooms while unsupervised until the social workers learned that a child was sexually abused by another child in the home.^[16]

15. Lundquist also related how the Applicant used his participation in the foster parent and adoptive parent community to take actions that appear to be self-aggrandizing, rather than in the best interest of the foster children involved. These actions included the Applicant’s involving himself in the

relationship between foster children and potential adoptive parents. Lundquist characterized her perception as a “low-level distrust” of the Applicant’s fitness for licensure as a foster parent.^[17]

16. On May 23, 2006, Nicole Markson, Child Protection Social Worker, recalled that the Applicant had poor boundaries, including calling female social workers his “girlfriends” in front of the foster children. Markson’s overall impression of the Applicant was that he was “very ‘weird.’”^[18]

17. In June, 2006, the County received two emails regarding the Applicant. In July, 2006, the County received an email from another person who described being a neighbor of the Applicant, and an acquaintance for 20 years. These emails were considered in the County’s assessment.^[19] Sarenpa did not solicit outside information regarding the Applicant, and to receive outside information during an investigation is extremely unusual.^[20]

18. After conducting a required background study, the Department initially determined that the Applicant was disqualified from direct contact with persons served by programs licensed by the Department due to the substantiated instance of maltreatment in 2001.^[21] The Applicant requested reconsideration of the disqualification. On December 7, 2006, the disqualification was rescinded by the Department.^[22]

19. In January, 2007, Child Protection received a report of maltreatment regarding the Applicant.^[23] Child Protection investigated the report. On March 15, 2007, Child Protection informed the Applicant that it made no determination that maltreatment occurred.^[24] The report was not considered in assessing the application for foster care licensure, beyond the fact of its being a complaint regarding the Applicant.^[25]

20. By letter dated March 19, 2007, the County submitted its recommendation regarding the Application to the Department. The County described the investigation that had been performed and summarized the evidence obtained in that investigation. The County concluded that the Applicant had not shown the ability to consistently adhere to the requirements of the foster care program, particularly regarding lack of cooperation with the social workers responsible for placement of foster care children and the Applicant’s not adhering to boundaries in the various relationships found in foster care settings.^[26] The County recommended denial of the license application.^[27]

21. In June, 2007, Sarenpa expanded the scope of her inquiries into the history of the Applicant’s placements by emailing other workers who had placed foster children with the Applicant. Sarenpa received five responses from social workers and adoption specialists that were similar to those that were received in May (set out in Findings 10 to 16, above). None of the responses strongly indicated that the Applicant should be relicensed as a foster care provider.^[28]

22. On August 9, 2007, the Applicant submitted information to the Department that responded to the County's recommendation. Much of the response disputed the relevance of the earlier history of the Applicant's foster care record.^[29]

23. Accompanying the Applicant's August 9 submission was a letter from Sandra Frojen, who gave her impression of the Applicant as follows:

Although Dan and I have had our differences, I have always been impressed with his ability as a foster Dad. I have personally seen him in action with kids and have been awed by his ability to remain calm in the midst of chaos and to turn that chaos into calm. He is extremely competent and caring when it comes to children and their needs whether they be concrete or subtle. He has been a strong advocate for his foster kids. I have heard many stories about his struggles with the cracks in the system and am very grateful that he continues to "hang in there" and try to provide excellent care for children who through no fault of their own have found themselves needing someone like Dan in their lives.^[30]

24. Also accompanying the Applicant's submission was a letter from Thomas Latimer, LICSW, who provided his impressions of the Applicant as a person who was "open to feedback and learning new skills." Latimer also noted his impression that the Applicant had been "open, honest, and cooperative" in their dealings.^[31]

25. On August 28, 2007, the Department issued an Order of Denial that denied Reber's Application for a child foster care license. The Department relied upon the 2001 maltreatment finding, the 2002 child foster care license revocation, parenting problems, lack of cooperation with foster care workers, and improper boundaries in deciding to deny the Application.^[32]

26. The Order of Denial included a description of the Applicant's appeal rights. The Applicant filed a timely request for hearing.

27. On September 12, 2007, the Department issued a Notice of and Order for Hearing setting this matter on for hearing before the Administrative Law Judge.^[33]

Based on the Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Human Services have jurisdiction over this matter pursuant to Minn. Stat. §§ 14.50 and 245A.08.

2. The Applicant was given timely and proper notice of the hearing in this matter and all procedural requirements have been fulfilled.

3. Minn. Stat. § 245A.04, subd. 6, specifies that the Commissioner of Human Services shall evaluate information gathered regarding an application for licensure, including foster care licenses. The Commissioner is required to consider “facts, conditions, or circumstances” regarding the proposed program and prospective license holder.

4. Minn. Stat. § 245A.05, allows the Commissioner to deny a license application for failure to comply with applicable laws and rules. In the context of a license application, this includes future compliance with the applicable laws and rules.

5. Minn. R. 2960.3060, subp. 4, sets out the requirements for a “home study” of the applicant, which includes an interview to determine if the applicant demonstrates the qualities needed to provide foster care. Providing consistent supervision and discipline, working within the county and state policies, and having a current network of support are specific quality requirements of a foster care license applicant under that subpart.^[34]

6. Minn. R. 2960.3080, subp. 5, requires that applicants for foster care licensure must “cooperate with the child’s placing agency”

7. At a hearing on denial of an application, the applicant bears the burden of proof to demonstrate by a preponderance of the evidence that the applicant has complied fully with Minn. Stat. Chap. 245A and other applicable laws or rules and that the application should be approved and a license granted.

8. The Applicant has not demonstrated that he meets the requirements for provision of foster care.

9. It is appropriate to affirm the denial of the Applicant’s foster care license application.

Based on the Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS RECOMMENDED that the denial of the application of Daniel Reber for a child foster care license be AFFIRMED.

Dated: January 7, 2008.

/s/ Richard C. Luis

RICHARD C. LUIS

Administrative Law Judge

Reported: Digitally Recorded, No Transcript Prepared.

NOTICE

This Report is a recommendation, not a final decision. The Commissioner of the Department of Human Services will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations contained herein. Pursuant to Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact the Office of the Commissioner, Department of Human Services, 444 Lafayette Road, St. Paul, Minnesota 55155 (telephone no. (651) 296-2701), to ascertain the procedure for filing exceptions or presenting argument.

Pursuant to Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail. If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

MEMORANDUM

The hearing record supports the conclusions of the Department regarding the Applicant's capacity to act as a foster care provider. As a foster care provider, the County received a high number of complaints regarding the Applicant's care. The problems experienced in the Applicant's licensed foster care were sufficient to support revocation of that license in 2002.

After the revocation of the Applicant's foster care license, he was on notice as to what was required of foster care parents for cooperation in placements. Ms. Woodland amply described the Applicant's angry responses to the circumstances surrounding the efforts to obtain an adoptive placement for D.J. This conduct is indicative of the Applicant's lack of cooperation with the County and is a basis for denying licensure. The Applicant's testimony at the hearing indicates that he views the relationship between the County and foster parents as being one of conflict, not cooperation.

The Applicant maintains that the County was obligated to engage in further activity (such as a home visit and directing him to take certain classes) to qualify him as a licensed foster care provider. The home study requirement in Minn. R. 2960.3060, subp. 4, is directed toward the prospective foster care provider, not the premises. The County's investigation was sufficient to determine that a negative recommendation would be made to the Department. Other actions suggested by the Applicant, such as visiting his home or having him take classes, would not change the County's determination and are not relevant to the Department's final determination.

The Applicant characterized the time from the revocation of his license as having had to "serve the five years" before relicensure. This approach does not reflect the decision-making process required in determining whether to grant an application for licensure. The Department is required to consider whether the Applicant's future behavior is likely to conform to the rules governing the provision of foster care. The Applicant's record, both as a licensed foster care provider and as the legal custodian of a child awaiting adoptive placement, shows that he is not likely to meet those standards. Denial of the Applicant's request for foster care licensure is appropriate.

R.C.L.

^[1] Testimony of Reber.

^[2] Ex. 127.

^[3] Exs. 8 and 24.

^[4] Ex. 20.

^[5] Testimony of Sarenpa.

^[6] Ex. 48.

^[7] Ex. 116.

^[8] Ex. 5.

^[9] Ex. 7.

^[10] Testimony of Sarenpa.

^[11] Testimony of Woodland; Ex. 12.

^[12] Testimony of Woodland.

^[13] Ex. 13.

^[14] Ex. 14.

^[15] Ex. 15.

^[16] Ex. 16.

^[17] Ex. 16.

^[18] Ex. 17.

^[19] These emails, originally admitted as Exs. 9, 10 and 11, were subsequently withdrawn at the hearing. The substance of those emails was not considered in arriving at the recommendation to the Commissioner through this proceeding.

^[20] Testimony of Sarenpa.

^[21] Ex. 91.

^[22] Ex. 92.

[\[23\]](#) Ex. 19.

[\[24\]](#) Ex. 135.

[\[25\]](#) Testimony of Bryant.

[\[26\]](#) Testimony of Bryant.

[\[27\]](#) Ex. 3.

[\[28\]](#) Exs. 102-106.

[\[29\]](#) Ex. 97. The Applicant's response also addressed the substance of the emails that were withdrawn at the hearing.

[\[30\]](#) Ex. 98; Testimony of Frojen.

[\[31\]](#) Ex. 99.

[\[32\]](#) Ex. 1.

[\[33\]](#) Notice and Order for Hearing.

[\[34\]](#) Minn. R. 2960.3060, subp. 4, items A, C, and G.